

OSTER
Researching Services - INTERSTATE COMMERCE COMMISSION

12897 Colonial Dr. • Mt. Airy, Md. 21771
301-253-6040

DEC 28 1988 9-30 PM

1 6109
RECORDATION NO. FILED 1428

December 28, 1988

No. 8-363A011
DEC 28 1988
Date

Ms. Mildred Lee
Interstate Commerce Commission
Recordations Unit
12th & Constitution Avenue, N.W.
Washington, D.C. 20423

Fee \$ 13.00

ICC Washington, D. C.

Dear Ms. Lee:

Enclosed is a Lease of Railroad Equipment dated September 30, 1988, between the following parties:

Lessor: Helm Financial Corporation
One Embarcadero Center
San Francisco, CA 94111

Lessee: Soo Line Railroad Co.
Minneapolis, MN

The equipment involved in this transaction is as follows:

Equipment: 69, Bi-level Autoracks
See Annex B

Please file this agreement as a primary document. The filing fee of \$13 is enclosed. Thank you.

Sincerely,

Mary Ann Oster

Mary Ann Oster
Research Consultant

Enclosures

100-114-100
DEC 28 9 21 AM '88
NOTED & RATED UNIT

- Mary Ann Oster
C.

Interstate Commerce Commission

Washington, D.C. 20423

12/28/88

OFFICE OF THE SECRETARY

Mary Ann Oster
Oster Researching Services
12897 Colonial Dr.
Mt. Airy, Maryland 21771

Dear Mrs. Oster

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 12/28/88 at 9:30am, and assigned recordation number(s). 16109 & 16110

Sincerely yours,

Neta R. McGee

Secretary

Enclosure(s)

INTERSTATE COMMERCE COMMISSION

DEC 28 1988 9:30 PM

1 6109
RECORDATION NO. 1 6109 PROS 1428

NET MASTER LEASE

LEASE OF RAILROAD EQUIPMENT

BETWEEN

HELM FINANCIAL CORPORATION

AND

SOO LINE RAILROAD COMPANY

LEASE OF RAILROAD EQUIPMENT

LEASE OF RAILROAD EQUIPMENT, dated as of September 30, 1988 between HELM FINANCIAL CORPORATION, a California corporation, (hereinafter called the "Lessor") and the SOO LINE RAILROAD COMPANY (hereinafter called the "Lessee"), a Minnesota corporation. The term "Affiliate" as used hereinafter means any parent or subsidiary of the Lessee or any subsidiary of the Lessee's parent.

WHEREAS, the Lessor hereby represents that it is the Owner of and has free and clear title to the sixty-nine (69) bi-level autoracks more fully described in Annex A hereto (hereinafter called the "Units");

WHEREAS, the Lessee desires to lease from the Lessor all the Units at the rentals and for the terms and upon the conditions hereinafter provided;

NOW, THEREFORE, in consideration of the premises and of the rentals to be paid and the covenants hereinafter mentioned to be kept and performed by the Lessee, the Lessor hereby leases the Units to the Lessee upon the following terms and conditions:

1. Delivery and Acceptance of Units. The Lessee hereby accepts the Units whereupon each Unit shall be subject thereafter to all terms and conditions of the Lease. Lessee will provide Lessor with a certificate of acceptance for the Units as provided in Annex B (hereinafter "Certificate of Acceptance").

2. Car Hire Earnings. Upon acceptance of the Units as set forth in Section 1 hereof, with reporting marks on each Unit as set forth in Section 5 and Annex A hereto, Lessee shall enjoy all car hire earnings (per diem and mileage) thereafter until the expiration or sooner termination of this Lease. If reporting marks are other than Lessors, Lessor shall not be responsible for collection of any car hire earnings and such responsibility shall lie solely with Lessee.

3. Rentals. The Lessee agrees to pay the Lessor rental for each Unit subject to this Lease for forty-six (46) monthly installments, payable monthly. The monthly payments shall be in the amount of [REDACTED] each per Unit with the first payment due on September 30, 1988. The effective date of the Lease shall begin on September 30, 1988 (hereinafter referred to as "Effective Date") and shall continue in effect with regard to each of the Units until returned to the Lessor at the end of the term of this Lease, as hereafter provided in Section 4. Payment of Lease Rental shall be made to the Lessor at the address specified in Section 17, or to such other place as Lessor may direct. Rental for any Unit for any partial month shall be prorated on a daily basis. Any costs incurred by the Lessor in collecting Rental wrongfully withheld by Lessee, including reasonable attorney fees, will be paid by the Lessee.

In the event the Lessee shall be in default in the payment of any sum of money to be paid under this Lease, whether rental or otherwise, the Lessee shall pay the Lessor, as additional rental, to the extent permitted by applicable law, interest on such unpaid sum from its due date to date of payment by the Lessee at a rate equal to [REDACTED] per annum.

This Lease is a net lease and the Lessee shall not be entitled to any abatement of rent, reduction thereof or set-off against rent, including, but not limited to, abatements, reductions or setoffs due or alleged to be due to, or by reason of, any past, present or future claims of the Lessee against the Lessor under this Lease or otherwise except if the covenant of quiet enjoyment of the Lease is broken; nor shall this Lease terminate, or the respective obligations of the Lessor or Lessee be otherwise affected, by reason of any defect in or damage to or loss of possession or loss of use of or destruction of all or any of the Units from whatsoever cause, the prohibition of or other restriction against Lessee's use of all or any of the Units, the interference with such use by any private person or entity (except if caused as a result of Lessor's action or inaction), the invalidity or unenforceability or lack of due authorization of this Lease, or for any other cause whether similar or dissimilar to the foregoing, and present or future law to the contrary notwithstanding, it being the intention of the parties hereto that the rents and other payments payable by the Lessee hereunder shall continue to be payable in all events in the manner and at the times herein provided. To the extent permitted by applicable law, the Lessee hereby waives any and all rights which it may now have or which at any time hereafter may be conferred upon it, by statute or otherwise, to terminate, cancel, quit or surrender the lease of any Units except in accordance with the express terms hereof. Each rental or other payment made by the Lessee hereunder shall be final and the Lessee shall not seek to recover all or any part of such payment from the Lessor for any reason whatsoever except for any excess payment made in error. The rentals and other sums payable by the Lessee hereunder shall be paid without notice, demand, counterclaim, or defense by reason of any circumstance or occurrence whatsoever except as otherwise stated herein.

4. Term of Lease. The term of this Lease with respect to each Unit shall begin on the Effective Date, and, unless sooner terminated in accordance with the provisions of the Lease, shall end forty-six (46) months thereafter.

The obligations of the Lessee hereunder (including, but not limited to, the obligations of the Lessee under Sections 6, 9 and 11 hereof) shall survive the expiration or sooner termination of this Lease.

5. Identification Marks. The Lessee will cause each Unit to be kept numbered at Lessee's expense with its identifying number as set forth in Annex A hereto and will keep and maintain, plainly, distinctly, permanently and conspicuously marked on each side of such Unit in letters not less than one inch in height, the words "Ownership subject to a security agreement filed with the Interstate Commerce Commission" or other appropriate words designated by the Lessor, with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the title of the Lessor and the rights of the Lessor under this Lease. The Lessee will not place any such Unit in operation or exercise any control or dominion over the same until such names and word or words shall have been so marked on both sides thereof and will replace promptly any such names and word or words which may be removed, defaced or destroyed. The Lessee will not permit the identifying number of any Unit to be changed except in accordance with a statement of new identifying numbers to be substituted therefor, which statement previously shall have been filed with the Lessor by the Lessee and filed, recorded or deposited in all public offices where this Lease will have been filed, recorded and deposited.

Except as above provided, the Lessee will not allow the name of any person, association or corporation to be placed on the Units as a designation that might be interpreted as a claim of ownership.

6. Taxes. All payments to be made by the Lessee hereunder will be free of expense to the Lessor for collection or other charges and will be free of expense to the Lessor with respect to the amount of any local, state or federal taxes (other than the federal income tax payable by the Lessor in consequence of the receipt of payments provided herein and other than state or city income taxes or franchise taxes measured by gross or net income based on such receipts or based on capital employed by Lessor, except any such tax which is in substitution for or relieves the Lessee from the payment of taxes which it would otherwise be obligated to pay or reimburse as herein provided), assessments or licenses (and any charges, fines or penalties in connection with or measured by, this Lease or any sale, rental, use, payment, shipment, delivery or transfer of title under the terms hereof), all of which taxes, assessments, licenses, charges, fines and penalties the Lessee assumes and agrees to pay on demand in addition to the payments to be made by it provided for herein. The Lessor shall promptly notify Lessee of any notification Lessor receives with regard to taxes, assessments or licenses. The Lessee will also pay promptly all taxes, assessments or licenses (and any charges, fines or penalties in connection therewith) which may be imposed upon any Unit or for the use or operation thereof or upon the Lessee's earnings arising therefrom or upon the Lessor solely by reason of its ownership thereof and will keep at all times all and every part of such Unit free and clear of all taxes and

assessments for which Lessee is responsible, which might in any way affect the title of the Lessor or result in a lien upon any such Unit. Lessee may if in good faith and through appropriate administrative or legal proceedings contest the amount or validity of any tax assessment or license that has an effect upon Lessee (and any charges, fines or penalties in connection therewith) so long as Lessors title and ownership of the Units is not materially jeopardized by the Lessee.

7. Loss, Damage or Destruction.

(a) Risk of Loss, Damage or Destruction. As between Lessee and Lessor and any Assignee of Lessor, Lessee hereby assumes all risk of loss, damage, theft, taking, destruction, confiscation, requisition or commandeering, partial or complete, of or to each Unit, however caused or occasioned (provided that Lessor and any Assignee shall be responsible for any and all damage and liabilities caused by Lessor and any Assignee), such risk to be borne by Lessee with respect to each Unit from its Acceptance Date, and continuing until such Unit has been returned to Lessor in accordance with the provisions of Section 11 hereof. Lessee agrees that, except as otherwise provided herein, no occurrence specified in the preceding sentence shall impair, in whole or in part, any obligation of Lessee under this Lease, including, without limitation, the obligation to pay rent (provided that Lessor and any Assignee shall be responsible for any and all damage and liabilities caused by Lessor and any Assignee).

(b) Casualty Occurrence. In the event that any Unit shall be or become worn out, lost, stolen, destroyed or irreparably damaged or obsolete or economically unserviceable from any cause whatsoever, or any Unit shall be condemned, confiscated, or seized, or the title to or use of any Unit shall be requisitioned for a period of ninety (90) continuous days (such occurrences being hereinafter called "Casualty Occurrences") during the term of this Lease, the Lessee shall on the next succeeding rental payment date after it shall have determined that such Unit has suffered a Casualty Occurrence, fully inform the Lessor in regard thereto. On such date the Lessee shall pay to the Lessor any rentals or other sums payable for such Unit to the date of such payment. A settlement value payment pursuant to Rule 107, Section B, Part 2, Subsection b7 of the Field Manual of the AAR Interchange Rules and Car Hire Agreement Code with an adjusted depreciation rate of [REDACTED] per annum will also be made as of that date. Upon the making of such payment by the Lessee in respect of a Unit, the rental for such Unit shall cease to accrue as of the date of such payment, the term of this Lease as to such Unit shall terminate and (except in the case of the loss, theft or complete destruction of such Unit) the Lessor shall be entitled to recover possession of such Unit. If a Unit is casualtyed, Lessor shall have the right to purchase the Unit for the then prevailing scrap rate, published in the Wall Street

Journal, multiplied by the light weight of the Unit. Lessor shall assume the cost of preparation and off-line movement of the Unit. Lessor has the right, in its sole discretion, to replace any and all Units subject to a Casualty Occurrence and such replacement Units shall be similar in all respects (unless mutually agreed to otherwise) and will be subject to this Lease as if originally a part thereof.

Except as hereinabove in this Section 7 provided, the Lessee shall not be released from its obligations hereunder in the event of, and shall bear the risk of, any Casualty Occurrence to any Unit after delivery to and acceptance thereof by the Lessee hereunder.

8. Report and Inspection. On or before April 1st in each year, commencing with the calendar year 1989, the Lessee will furnish to the Lessor (a) an accurate statement setting forth as of the preceding twelve (12) months the amount, description and numbers of all Units then leased hereunder, the amount, description and numbers of all Units that have suffered a Casualty Occurrence during the preceding calendar year and (b) such other information regarding the condition and state of repair of the Units as the Lessor may reasonably request. The Lessor or its agent, at its sole cost and expense, shall have the right, to inspect the Units and the Lessee's records with respect thereto at such reasonable times as the Lessor may request during the continuance of this Lease. Any inspection will be at the sole risk of Lessor or its agents. As a precondition for entry onto Lessee's property, Lessor and its agents agree to execute a release of liability form, releasing Lessee from all liability for personal injury or property damage even if caused by Lessee's negligence or reckless negligence.

9. Compliance with Laws and Rules; Insurance and Indemnification. Lessor warrants that Lessor is the lawful owner of the Units and has good and marketable title to the Units. Lessor hereby assigns to Lessee for the term of this Lease the benefit of all warranties and indemnities of the manufacturer, reconditioner, repairer or maintainer of the Units. Otherwise, except for the aforesaid, LESSOR MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND RESPECTING THE UNITS WHETHER STATUTORY, WRITTEN, ORAL OR IMPLIED AND LESSOR HAS NOT MADE AND DOES NOT HEREBY MAKE, NOR SHALL IT BE DEEMED BY VIRTUE OF HAVING LEASED THE UNITS PURSUANT TO THIS LEASE TO HAVE MADE, ANY REPRESENTATION OR WARRANTY AS TO THE MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, DESIGN OR CONDITION OF, OR AS TO THE QUALITY OF WORKMANSHIP IN THE UNITS ALL OF WHICH ARE EXPRESSLY DISCLAIMED AND LESSOR SHALL NOT BE LIABLE, IN CONTRACT, TORT OR OTHERWISE, ON ACCOUNT OF ANY MANUFACTURER'S DEFECT, WHETHER HIDDEN, LATENT OR OTHERWISE DISCOVERABLE OR NONDISCOVERABLE RESPECTING ANY UNITS.

The Lessee agrees, for the benefit of the Lessor, to comply in all respects with all laws of the jurisdictions in which operations involving any Unit subject to this Lease may extend, with the interchange rules of the Association of American Railroads and with all rules of the Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over any such Unit, to the extent such laws and rules affect the operations or use of such Unit; and in the event such laws or rules require the alteration or modification of any such Unit, the Lessor will conform therewith, and will maintain the same in proper condition or operation under such laws and rules; provided, however, that the Lessor may, in its reasonable judgement based upon the cost and economic value of such modifications or alterations in relation to the then estimated fair market value of the Units elect to do either of the following: (A) permanently delete the affected Units from this Lease upon ninety (90) days notice or (B) arrange to make the appropriate modifications at its expense. If the modifications are made at Lessor's expense, the term as defined in Section 4 (hereinafter "Term") for the Units will be extended, without additional rental, by the number of days that the Units are out of Lessee's service. If Lessor elects option (A), Lessee, may at its sole option, within forty-five (45) days from receipt of Lessor's notice, notify Lessor that Lessee will perform the appropriate modifications at its expense. If the modifications are made by Lessee at its expense, the Term for the Units will be extended, without additional rental, by the number of days necessary to complete the modifications. Should either Lessor or Lessee perform the required modifications, Lessee agrees to continue to make all required Lease Rental payments during the initial Term, i.e., the term that would apply in the absence of any required modifications, with all free Lease Rental attributable to modifications to be received at the end of the initial Term. If Lessor fails to elect and perform its obligations under (A) and (B) hereof as to any or all of the Units prior to the effective date of laws or rules requiring alterations or modifications of as to any or all of the Units this Lease shall terminate, no further rentals shall accrue and Lessor shall refund to Lessee any prorated prepaid rents from the date of the termination period. Lessee shall return the Units pursuant to Section 11 hereof.

Subject to Section 7, and this Section the Lessee agrees that at its own cost and expense it will return the Units to the Lessor at the expiration of the term or sooner termination of this Lease in good order and repair, ordinary wear and tear excepted, suitable for movement in the interchange system in conformity with all applicable laws and regulations including the AAR Code of Rules and FRA Railroad Freight Car Safety Standards, except for alterations or modifications which are the Lessors responsibility hereunder.

Neither party to this Lease will alter materially the physical structure or allow any third party to alter materially the physical structure of any of the Units without the other party's written consent.

Any and all additions to any Unit and any replacements thereto and of parts thereof made by the Lessee shall constitute accessions to such Unit and, without cost or expense to the Lessor, there shall be immediately vested in the Lessor the same interest therein as the interests of the Lessor in such Unit.

The Lessee will, at all times prior to the return of the Units pursuant to the terms hereof and at the Lessee's own expense, cause the following insurance to be carried and maintained: (a) "All Risk" property insurance in respect of the Units at all times; provided, that the Lessee may self-insure such Units to the extent that the Lessee customarily self-insures equipment owned or leased by it similar to the Units, but only to the extent such self-insurance is consistent with prudent industry practice for the railroad industry and (b) excess liability insurance with respect to third-party personal injury, death and property damage in such amounts and for such risks and with such insurance companies as is consistent with prudent industry practice for the railroad industry. In any event, such coverage will not be less comprehensive in amount and coverage than amounts and coverage customarily maintained by the Lessee with respect to similar equipment owned or leased by the Lessee. Attached hereto as "Annex C" is a summary of the types and amounts of insurance currently maintained by Lessee.

If self-insurance or insurance is cancelled or materially altered or reduced in coverage (except as otherwise permitted under the terms of this Lease) by the Lessee, Lessee must give thirty (30) days prior written notice to Lessor.

The Lessee agrees to indemnify save harmless and defend the Lessor against any charges or claims made against the Lessor, and against any expense, loss or liability (including but not limited to counsel fees and expenses, penalties and interest) which the Lessor may incur in any manner (except to the extent of Lessors sole or gross negligence or willful misconduct) by reason of entering into or the performance of this Lease or the ownership of, or which may arise in any manner out of or as a result of the ordering, acquisition, use, operation, condition, purchase, delivery, rejection, storage or return of, any Unit until such Unit is returned to the Lessor in accordance with the terms of the Lease, and to indemnify and save harmless the Lessor against any charge, claim, expense, loss or liability on the account of any accident (except to the extent of Lessors sole or gross negligence or willful misconduct) in connection with the operation, use, condition, possession or storage of such Unit resulting in damage to property or injury or death to any person. The indemnities contained in this paragraph shall survive payment or performance of

all other obligations under this Lease or the termination of this Lease.

The Lessee agrees to prepare and deliver to the Lessor within a reasonable time prior to the required date of filing (or, to the extent permissible, file on behalf of the Lessor) any and all mandatory reports of which the Lessee has or reasonably should have actual knowledge, except income tax reports, to be filed by the Lessor, with any federal, state or other regulatory authority by reason of the ownership by the Lessor of the Units or the leasing of the Units to the Lessee. The Lessor shall notify the Lessee of any such reports of which the Lessor has actual knowledge.

10. Liens. Lessee will not directly or indirectly create, incur, assume or suffer to exist any lien on or with respect to the Units, any Unit or any part thereof, Lessor's title thereto, or any interest therein, except (i) any lien resulting from an independent act of or claim against Lessor which does not result from, arise out of, or relate to the manufacture, acquisition, or leasing of the Units or this Lease or any Lease Supplement or any Event of Default, (ii) liens for taxes either not yet delinquent or being contested by Lessee in good faith by appropriate proceedings and where, in Lessor's (and in any assignee of Lessor's) opinion, there is no material danger of the sale, forfeiture or loss of the Units or any part or item thereof, and (iii) materialmen's, mechanics', workmen's, repairmen's, employees' storage or other like liens arising in the ordinary course of business, which are not delinquent or are being contested by Lessee in good faith by appropriate proceedings and where, in Lessor's (and in any assignee of Lessor's) opinion, there is no material danger of the sale, forfeiture or loss of the Units, or any part thereof. Lessee, at its own expense, will promptly pay, satisfy and otherwise take such actions as may be necessary to keep the Units free and clear of, and to duly discharge or eliminate or bond in a manner satisfactory to Lessor (and any assignee of Lessor), any such lien not excepted above if the same shall arise at any time. Lessee will notify Lessor (and any assignee of Lessor) in writing promptly upon becoming aware of any tax or other lien (other than any lien excepted above) that shall attach to the Units or any Unit, and of the full particulars thereof.

11. Return of the Units Upon Expiration of Term. As soon as practicable on or after the expiration of the term of this Lease with respect to any Unit, the Lessee will, at its own cost and expense, at the request of the Lessor, remark such Unit, deliver possession of such Unit to the Lessor at such interchange of the Lessee as the Lessor may reasonably designate. The Lessee shall designate no more than three (3) storage track locations for the Unit(s) and will notify Lessor of the storage locations prior to the termination of this Lease. The storage locations designated by the Lessee shall be accessible by Lessor but shall in no way

obstruct the normal flow of rail traffic. The condition of the Units upon such return shall be as required, pursuant to Section 9 hereof. The Lessee shall bear the cost of movement on Lessee's (or Affiliates) lines and permit the Lessor to store such Unit on its own tracks at the risk of Lessee, free of charge for a period not exceeding ninety (90) days after such expiration and shall transport the same to any reasonable place on the lines of railroad operated by the Lessee or to any connecting carrier for shipment, all as reasonably directed by the Lessor. If the Lessor instructs the Lessee to store such Unit for a period beyond ninety (90) days after the expiration of this Lease with respect to such Unit, such additional storage shall be at the expense and risk of the Lessor with the exception of any loss damage or destruction caused by gross negligence or willful misconduct of Lessee. During any such storage period the Lessee will permit the Lessor or any person designated by it, including the authorized representative to inspect the same at such reasonable time or times as the Lessee shall agree to. Any such person entering onto Lessee's property to inspect the Unit(s) will do so at their own risk and that of Lessor and such person will be required to execute a release of liability form as a precondition to entry onto Lessee's property including a release of liability caused by Lessee's negligence or gross negligence.

The assembling, delivery, storage and transporting of the Units as provided in this Section 11 are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises, the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to assemble, deliver, store and transport the Units. If the Lessor shall elect to abandon any Unit which has suffered a Casualty Occurrence or which after the expiration of this Lease the Lessor shall have deemed to have suffered a Casualty Occurrence, it may deliver written notice to such effect to the Lessee and Lessee shall thereupon assume, and hold the Lessor harmless from all liability arising in respect of any, responsibility of ownership thereof, from and after receipt of such notice and Lessor shall transfer title to such Unit to Lessee free and clear of any liens and encumbrances whatsoever.

12. Default. If, during the continuance of this Lease, one or more of the following events (hereinafter sometimes called "Events of Default") shall occur;

(a) default shall be made in the payment of any part of the rental provided in Section 3 hereof and such default shall continue for ten (10) days after written notice is sent to Lessee;

(b) the Lessee shall make or permit any unauthorized assignment or transfer of this Lease or of possession of the Units, or any thereof;

(c) default shall be made in the observance or performance of any other of the covenants, conditions and agreements on the part of the Lessee contained herein and such default shall continue for thirty (30) days after written notice from the Lessor to the Lessee specifying the default and demanding the same to be remedied;

(d) any proceedings shall be commenced by or against the Lessee for any relief under any bankruptcy or insolvency laws, or laws relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extension (other than a law which does not permit any readjustment of the obligations of the Lessee hereunder), and all the obligations of the Lessee under this Lease shall not have been duly assumed in writing, pursuant to a court order or decreed, by a trustee or trustees appointed for the Lessee or for the property of the Lessee in connection with any such proceedings in such manner that the status of such shall be the same as expense of trustees, within thirty (30) days after such appointment, if any, or sixty (60) days after such proceedings shall have been commenced, whichever shall be earlier;

(e) any material representation made by the Lessee herein or in any certificate or other instrument delivered under or pursuant to any provision hereof shall prove to have been false or incorrect in any material respect on the date as of which made;

then, in any such case, the Lessor, at its option may:

(i) proceed by appropriate court action or actions either at law or in equity, to enforce performance by the Lessee of the applicable covenants of this Lease or to recover damages for the breach thereof; or

(ii) by notice in writing to the Lessee terminate this Lease, whereupon all rights of the Lessee to the use of the Units shall absolutely cease and determine as though this Lease had never been made, but the Lessee shall remain liable as herein provided; and thereupon, the Lessor may in a reasonable manner and without damage to the property of the Lessee or injury to any person by its agents enter upon the premises of the Lessee or other premises where any of the Units may be and take possession of all or any of such Units and thenceforth hold, possess and enjoy the same free from any right of the Lessee, or its successors or assigns, to use the Units for any purposes whatever; but the Lessor shall, nevertheless, have a right to recover from the Lessee any and all amounts which under the terms of this Lease may be then due or which may have accrued to the date

of such termination (computing the rental for any number of days less than a full rental period by multiplying the rental for such full rental period by a fraction of which the numerator is such number of days and the denominator is the total number of days in such full rental period) and also to recover forthwith from the Lessee (a) as representing actual loss incurred by the Lessor, damages for loss of the bargain and not as a penalty, a sum, with respect to each Unit which represents the then present value of all rentals for such Unit which would otherwise have accrued hereunder from the date of such termination to the end of the term of this Lease as to such Unit, such present value to be computed in each case on a basis of a 13% per annum discount, compounded annually from the respective dates upon which rentals would have been payable hereunder had this Lease not been terminated, less the present value of rentals received by Lessor for such Unit (as a result of Lessor's re-leasing such Unit to a third party) from the date of the re-leasing of such Unit to the end of term of this Lease as to such Unit, such present value to be computed in each case, on a basis of a 13% per annum discount compounded annually from the respective dates upon which rentals would have been payable hereunder had such Lease not been terminated, and (b) any damages and expenses, including reasonable attorneys' fees, in addition thereto which the Lessor shall have sustained by reason of the breach of any covenant or covenants of this Lease other than for the payment of rental, including, without limitation, expenses of resale or re-leasing (including incidental transportation costs incurred by Lessor). Lessor will take steps to mitigate it's damages.

The remedies in this Lease provided in favor of the Lessor shall not be deemed exclusive, but shall be cumulative, and shall be in addition to all other remedies in its favor existing at law or in equity. The Lessee hereby waives any mandatory requirements of law, now or hereafter in effect, which might limit or modify the remedies herein provided, to the extent that such waiver is permitted by law. The Lessee hereby waives any and all existing or future claims to any offset against the rental payments due hereunder, and agrees to make rental payments regardless of any offset or claim which may be asserted by the Lessee or on its behalf.

The failure of the Lessor to exercise the rights granted it hereunder upon any occurrence of any of the contingencies set forth herein shall not constitute a waiver of any such right upon the continuation or recurrence of any such contingencies or similar contingencies.

13. Return of Units Upon Default. If this Lease shall terminate pursuant to Section 12 hereof, the Lessee shall forthwith deliver possession of the Units to the Lessor. The condition of the Units upon such return shall be as required pursuant to Section 9 hereof. For the purpose of delivering possession of any Unit or Units to the Lessor as above required, the Lessee shall at its own cost, expense, and risk:

(a) forthwith place such Units upon such storage tracks of the Lessee as the Lessor reasonably may designate or, in the absence of such designation, as the Lessee may select,

(b) permit the Lessor to store such Units on such tracks for a period not exceeding six (6) months at the risk of the Lessee, and

(c) transport the same, at any time within such six (6) month period, to any place on the lines of railroad operated by the Lessee or to any connecting carrier for shipment, all as reasonably directed by the Lessor. The assembling, delivery, storage and transporting of the Units as provided in this Section 13 are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to assemble, deliver, store and transport the Units.

Without in any way limiting the obligation of the Lessee under the foregoing provisions of this Section 13, the Lessee hereby irrevocably appoints the Lessor as the agent and attorney of the Lessee, with full power and authority, at any time while the Lessee is obligated to deliver possession of any Unit to the Lessor, to demand and take possession of such Unit in the name and on behalf of the Lessee from whomsoever shall be at the time in possession of such Unit. In connection therewith Lessee will supply Lessor with such documents as Lessor may reasonably request.

14. Assignment; Possession and Use. Conditioned upon the Lessee performing all of the terms, covenants, and conditions of this Lease, the Lessor, its successors and assigns will not disturb the Lessee's peaceable and quiet possession and use of the Units during the term of this Lease, provided, that no Event of Default has occurred and is continuing.

This Lease shall be assignable in whole or in part by the Lessor without the consent of the Lessee if the assignment is for the purpose of financing the Units. Lessor will not assign any beneficial interests of the Lessor except upon Lessee's prior

written consent, which shall not be unreasonably withheld. Lessee will respond to Lessor's request for consent within two (2) business days. Lessee shall be under no obligation to any assignee of Lessor's unless Lessee receives written notice of such assignment from the Lessor. All the rights of the Lessor hereunder (including but not limited to the rights under Sections 6, 9 and 12) shall inure to the benefit of the Lessor's assigns. Whenever the term Lessor is used in this Lease it shall apply and refer to each assignee of the Lessor. In conjunction with any assignment of this Lease by Lessor, Lessee hereby agrees to provide any reasonable documentation requested by Lessor.

So long as the Lessee or its Affiliates shall not be in default under this Lease, the Lessee may without any prior consent of the Lessor sublease any one or more of the Units or assign this Lease to any one or more of the Lessee's Affiliates, or with the prior written consent of the Lessor sublease the Units to third parties; provided, that (i) such sublease or assignment shall provide that the subject Units shall be operated and maintained in accordance with the terms hereof; (ii) the Lessee shall provide the Lessor with ten (10) days advance notice of any such sublease or assignment and a copy of such sublease or assignment; (iii) such sublease shall be subject and subordinate to the terms and provisions of this Lease and the interests of the Lessor; and (iv) no such sublease or assignment shall relieve Lessee of its obligations hereunder, which shall remain those of a principal and not a surety.

However, the Units may be used by other carriers in the usual interchange of traffic in standard AAR pooling agreements or pursuant to run-through agreements and to allow the use of its rights to the Units by any non-affiliated railroad company for a period up to one hundred eighty (180) days, provided however that no sublease shall have a term longer than the Lease term and all the terms and conditions shall comply with (i), (iii) and (iv) in the preceding paragraph.

The Lessee represents and warrants that: (i) Lessee (or any assignee or sublessee) will not at any time during the term of this Lease use or fail to use any Unit, in such a way as to disqualify it as "Section 38 property" within the meaning of Section 48 of the United States Internal Revenue Code; (ii) Lessee (or any assignee or sublessee) will at all times during the term of this Lease use each Unit in such a way that for federal income tax purposes, all amounts includable in the gross income of Lessor with respect to each Unit and all deductions allowable to Lessor with respect to each Unit will be treated as derived from, or allowable to, sources within the United States; and (iii) Lessee will maintain sufficient records to verify such use, which records will be furnished to Lessor within thirty (30) days after receipt of a written demand therefor.

So long as the Lessee shall not be in default under this Lease, the Lessee shall be entitled to the possession and use of the Units in accordance with the terms of this Lease, but the Lessee shall not assign or transfer (except as otherwise permitted by this Section 14) or encumber its leasehold interest under this Lease in the Units and, in addition, the Lessee, at its own expense, will as soon as possible cause to be duly discharged any lien, charge or other encumbrance (other than an encumbrance resulting from claims against the Lessor not related to the ownership of the Units) which may at any time be imposed on or with respect to any Unit or the interest of the Lessor, or the Lessee therein. The Lessee shall not, without the prior written consent of the Lessor, part with the possession or control of, or suffer or allow to pass out of its possession or control, any of the Units, except to the extent permitted by the provision of the next succeeding paragraph hereof.

Nothing herein shall prevent use by other railroads without Lessors prior consent in the usual interchange of traffic and Lessee may receive and retain compensation for such from other railroads so using such Units. Nothing in this Section 14 shall be deemed to restrict the right of the Lessee to assign or transfer its leasehold interest under this Lease in the Units or possession of the Units to any corporation (which shall have duly assumed the obligations hereunder of the Lessee) into or with which the Lessee shall have become merged or consolidated or which shall have acquired the property of the Lessee as an entirety or substantially as an entirety; provided, however, (i) that such assignee or transferee will not, upon the effectiveness of such merger, consolidation or acquisition be in default under any provision of this Lease, (ii) such assignee or transferee shall be of a character so that after giving effect to such merger, consolidation or acquisition, the ability of the assignee or transferee to perform the obligations of the Lessee hereunder shall not, in the reasonable opinion of the Lessor, be adversely affected; and (iii) such assignee or transferee shall execute an assumption agreement expressly assuming all of the obligations of the Lessee hereunder (including, but not limited to, Section 16 hereof).

In connection with any sublease or assignment by Lessee under this Section 14, whether or not Lessee is required to obtain the consent of the Lessor to any such transaction, Lessee agrees, at its expense, to cause any such assignment or sublease to be duly filed and recorded with the Interstate Commerce Commission in accordance with 49 U.S.C. 11303 in order to protect the interest of the Lessor in and to the Units under this Lease.

The Lessee agrees that during the term of this Lease, the Lessee will not assign any Unit to service involving the regular operation and maintenance thereof outside the United States of America and that during such term any use of any Unit outside the

United States of America will be limited to incidental and temporary use in Canada.

15. Opinions of Counsel. Concurrently with or as soon as practicable after the execution and delivery of this Lease, the Lessee will deliver to the Lessor the written opinion of counsel for the Lessee, in scope and substance reasonably satisfactory to the Lessor and its counsel, to the effect that :

(a) the Lessee is a corporation legally incorporated and validly existing, in good standing, under the laws of its jurisdiction of incorporation, with adequate corporate power to enter into this Lease;

(b) this Lease has been duly authorized, executed and delivered by the Lessee and constitutes a valid, legal and binding agreement, enforceable in accordance with its terms;

(c) the execution and performance of this Lease will not contravene or breach or create a material default under any legal, organizational or contractual obligation binding upon the Lessee;

At the same time as delivery of the foregoing opinion of counsel for the Lessee, the Lessor will deliver to the Lessee the written opinion of counsel for the Lessor, in scope and substance reasonably satisfactory to the Lessee and its counsel, substantially to the effect set forth in subparagraphs (a) through (c) above with respect to the Lessor.

16. Recording. Prior to the delivery and acceptance of the Units, and in connection with any sublease or assignment permitted by Section 14 hereof the Lessor will cause this Lease to be filed and recorded with the Interstate Commerce Commission in accordance with 49 U.S.C. 11303 and the Lessee will cause any such sublease or assignment to be filed and recorded with the Interstate Commerce Commission in accordance with 49 U.S.C. 11303. The Lessee will, from time to time, do and perform any other act and will execute, acknowledge, deliver, file, register, record and deposit (and will refile, reregister, rerecord or redeposit whenever required) any and all further instruments required by law or reasonably requested by the Lessor for the purpose of proper protection to the satisfaction of the Lessor of its title to the Units or for the purpose of carrying out the intention of this Lease.

17. Notices. Any notice required or permitted to be given by either party hereto to the other shall be deemed to have been given when delivered in person or deposited in the United States certified mails, first-class postage prepaid, addressed as follows:

If to the Lessor: Helm Financial Corporation
One Embarcadero Center
Suite 3320
San Francisco, CA 94111
Attn: President

If to the Lessee: Soo Line Railroad Company
Soo Line Building
P.O. Box 530
Minneapolis, MN 55440
Attn: Vice President
Equipment Management

or addressed to either party at such other address as such party shall hereafter furnish to the other party in writing.

18. Severability. Any provision of this Lease which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition of unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

19. Effect and Modification of Lease. This Lease exclusively and completely states the rights of the Lessor and the Lessee with respect to the leasing of the Units and supersedes all other agreements, oral or written, with respect thereto. No variation or modification of this Lease and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized signatories for the Lessor and the Lessee.

20. Successors and Assigns. This Lease will bind and inure to the benefit of the respective successors and permitted assigns of the parties hereto.

21. Execution. This Lease, and any lease supplemental hereto, may be executed in several counterparts, each of which so executed shall be deemed to be an original, and in each case such counterparts together shall constitute but one and the same instrument.

22. Law Governing. This Lease shall be construed, and all questions concerning its performance and the rights and remedies of the parties hereunder shall be determined, in accordance with the laws of California; provided, however, that the parties shall be entitled to all rights conferred by 49 U.S.C. 11303.

IN WITNESS WHEREOF, the Lessor and the Lessee, each pursuant to due authority, have caused these presents to be signed in their respective names as of the date first above written.

HELM FINANCIAL CORPORATION

By 

Title 

SOO LINE RAILROAD COMPANY

By 

Title EXECUTIVE VICE PRESIDENT OPERATIONS

STATE OF CALIFORNIA

COUNTY OF SAN FRANCISCO) §

On this 20th day of December, 1988, before me personally appeared Richard C. Kirchner, to me personally known, who, being by me duly sworn, says that he is President of HELM FINANCIAL CORPORATION, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.



Elena F. Gary
Notary Public

My Commission Expires: July 24, 1992

[Notarial Seal]

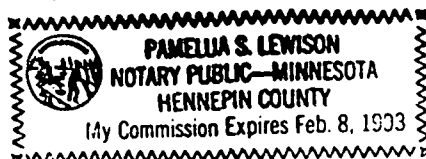
STATE OF Minnesota) §
COUNTY OF Hennepin)

On this 6 day of December, 1988, before me personally appeared Earl Currie, to me personally known, who, being by me duly sworn, says that he is EVP-Operations of Soo Line Railroad, that said instrument was signed and sealed on behalf of said corporation by authority of its President and Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Pamela S. Lewison
Notary Public

My Commission Expires: 2/8/93

[Notarial Seal]



ANNEX A
to
Lease of Railroad Equipment
Dated as of September 30, 1988

EQUIPMENT DESCRIPTION

Bi-level autoracks built in 1977.

NUMBER OF CARS

Sixty-nine (69)

<u>TTX INITIAL</u>	<u>CAR NO.</u>	<u>RACK NO.</u>	<u>TTX INITIAL</u>	<u>CAR NO.</u>	<u>RACK NO.</u>
TTGX	965672	58265-66	TTGX	965676	58213-14
	965682	58217-18		965687	58271-72
	965688	58207-08		965690	58195-96
	965698	58203-04		965699	58211-12
	965700	58227-28		965701	58223-24
	965702	58201-02		965703	58221-22
	965710	58183-84		965712	58181-82
	965746	58297-98		965749	58295-96
	965752	58167-68		965761	58185-86
	965762	58197-98		965763	58267-68
	965764	98193-94		965766	58261-62
	965767	59199-200		965769	58269-70
	965810	58205-06		965856	58245-46
	965857	58247-48		965858	58249-50
	965866	58257-58		965867	58251-52
	965868	58253-54		965869	58231-32
	965870	58233-34		965871	58235-36
	965872	58237-38		965873	58239-40
	965874	58229-30		965875	58255-56
	965876	58225-26		965877	58241-42
	965881	58243-44		910278	58395-96
	910318	58347-48		910393	58287-88
	910470	58367-68		910479	58277-78
	910491	58371-72		910501	58391-92
	910508	58273-74		910520	58285-86
	910658	58299-300		910841	58375-76
	910910	58383-84		911011	58377-78
	911110	58291-92		911147	58397-98
	911150	58359-60		911754	58381-82
	911900	58293-94		911935	58289-90
	911993	58279-80		912573	85283-84
	912677	58281-82		913615	58373-74
	940076	58389-90		963745	58379-80
	965669	58215-16		965670	58219-20
	965671	58209-10			

ANNEX B

CERTIFICATE OF ACCEPTANCE

The undersigned, a duly authorized representative of Soo Line Railroad Company (the "Lessee"), does hereby certify that he has caused to be inspected and, on the date set out below, has accepted on behalf of the Lessee the following described Units of equipment, which Units are in good order, condition and repair (except for latent defects) and conform in all respects to the terms, provisions, requirements and standards of the certain Lease of Railroad Equipment dated as September 30, 1988 between Helm Financial Corporation and Lessee.

EQUIPMENT DESCRIPTION: Bi-level autoracks built in 1977.

NUMBER OF CARS: Sixty-nine (69)

DATE ACCEPTED: September 30, 1988

CAR NUMBER

<u>TTX INITIAL</u>	<u>CAR NO.</u>	<u>RACK NO.</u>	<u>TTX INITIAL</u>	<u>CAR NO.</u>	<u>RACK NO.</u>
TTGX	965672	58265-66	TTGX	965676	58213-14
	965682	58217-18		965687	58271-72
	965688	58207-08		965690	58195-96
	965698	58203-04		965699	58211-12
	965700	58227-28		965701	58223-24
	965702	58201-02		965703	58221-22
	965710	58183-84		965712	58181-82
	965746	58297-98		965749	58295-96
	965752	58167-68		965761	58185-86
	965762	58197-98		965763	58267-68
	965764	98193-94		965766	58261-62
	965767	59199-200		965769	58269-70
	965810	58205-06		965856	58245-46
	965857	58247-48		965858	58249-50
	965866	58257-58		965867	58251-52
	965868	58253-54		965869	58231-32
	965870	58233-34		965871	58235-36
	965872	58237-38		965873	58239-40
	965874	58229-30		965875	58255-56
	965876	58225-26		965877	58241-42
	965881	58243-44		910278	58395-96
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	910508	58273-74		910520	58285-86
	910658	58299-300		910841	58375-76
	910910	58383-84		911011	58377-78
	911110	58291-92		911147	58397-98
	911150	58359-60		911754	58381-82
	911900	58293-94		911935	58289-90
	911993	58279-80		912573	58283-84
	912677	58281-82		913615	58373-74
	940076	58389-90		963745	58379-80
	965669	58215-16		965670	58219-20
	965671	58209-10			

Authorized Representative